

Bodies authorized to notify the Constitutional Court in Algeria

الهيئات المخولة بإخطار المحكمة الدستورية في الجزائر

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Abstract

... Notification is the process of reporting to the body charged with overseeing the constitutionality of legal texts issued by various institutions in the state. Given the importance of notification and its great role in the effectiveness of the constitutional body, whether it is a constitutional council or a constitutional court, this is on the one hand. On the other hand, due to the sensitivity and importance of the notified subject, the Algerian legislator always counts in its amendments on balancing seriousness, giving great importance and ensuring great effectiveness to the performance of the Constitutional Court regarding the control of the constitutionality of laws, as well as giving a place to the Constitutional Court proper to it, and working to expand the circle of notifiers to address all texts that can escape the control of the Constitutional Court, which is considered the protector of the Constitution, and works to ensure that all texts are equally issued by all authorities in the state, whether executive or legislative .

Keywords : constitutional oversight, constitutional court, executive authority, legislative authority.

ملخص:

إن الإخطار هو عملية الإبلاغ للهيئة المكلفة بالرقابة على دستورية النصوص القانونية الصادرة عن مختلف المؤسسات في الدولة ونظرا لأهمية الإخطار ولما له من دور بالغ في نجاعة الهيئة الدستورية سواء أكانت مجلس دستوري أو محكمة دستورية هذا من ناحية ومن ناحية أخرى فنظرا لحساسية الموضوع المخاطر به وأهميته فالمرجع الجزائري دائما يحص في تعديلاته على الموازنة بين الجدوية وإعطاء الأهمية البالغة وضمن نجاعة كبرى لأداء المحكمة الدستورية بخصوص الرقابة على دستوية القوانين وكذلك إعطاء مكانة للمحكمة الدستورية اللائقة بها والعمل على توسيع دائرة المخاطر حتى تتصدى لكل النصوص التي يمكن أن تفلت من رقابة المحكمة الدستورية والتي تعتبر حامية الدستور وتعمل على أن تكون جميع النصوص سواء الصادرة عن جميع السلطات في الدولة سواء التنفيذية أو التشريعية .

الكلمات المفتاحية: الإخطار، الرقابة الدستورية، المحكمة الدستورية، السلطة التنفيذية، السلطة

Introduction:

The Constitution is considered the highest law in modern systems, as it enjoys supremacy at the top of the legal pyramid, so it is imperative for legislators of other texts to ensure that they do not violate the provisions of the Constitution, otherwise they are rejected and canceled, and since this is the case, modern systems have used different methods to exercise constitutional control over laws, regulations and all texts, some of which have taken the path of political control and the establishment of a special body called the Constitutional Council, while others have followed the path of judicial control, which has been assigned to a constitutional court. Algeria, like all countries, and since exploitation, has wanted the Constitutional Council since the adoption of the first constitution of independent Algeria until the last amendment of 2020,

by which it established the Constitutional Court in Chapter IV of it under the title of oversight institutions and to enable it to perform its tasks of monitoring the constitutionality of laws in addition to other tasks. The Constitution specified the bodies that can notify the Constitutional Court if it deems that there has been a violation of the provisions of the Constitution. The process of notification was also present in all previous constitutions of the People's Democratic Republic of Algeria since exploitation,

but in each of the constitutional amendments, it changed these bodies that have the power to notify and this is what made us pose the following problem: What is the purpose of The constitutional founder of the changes that he makes each time he amends the constitution, especially those related to the bodies authorized to notify the Constitutional Council? Did the legislator achieve the desired objectives of each constitutional amendment? How well did the project achieve its intended goals?

The aim of this study is to enrich the legal library of researchers and specialists in the field, as well as to spread the legal culture in this regard for objective reasons. As for

personal reasons, they are to be able to participate in scientific qualification and progress in the pedagogical and career path. In our study, we used this analytical approach by extrapolating the articles of the constitutions that the Algerian state has known since exploitation to this day and trying to deal with the various differences and new amendments made by the constitutional founder every time so that we can answer the problem posed. Therefore, we propose to develop a plan that addresses the subject in all its aspects, which are as follows :

- 1- **period from 1962 to 1976**
- 2- **The period from 1989 to 1996**
- 3- **The period from 2016 to 2020.**
- 4- **Conclusion.**

1- period from 1962 to 1976

Immediately after independence, the Algerian legislature adopted the French legal system, in view of the legislative vacuum in independent Algeria on July 5, 1962. The French legal texts and existing structures that were in force were retained unless they contradicted national sovereignty, in accordance with Law No. 62-157 issued on December 31, 1962, unless there are texts repealing them¹, until the Constitution of the People's Democratic Republic of Algeria was promulgated on September 8 1963.

1-1 Notification under the Constitution 1963

The idea of controlling the constitutionality of laws emerged directly with the promulgation of the first constitution of the Algerian state. On September 8, 1963, the Algerian legislator adopted the idea by providing for the establishment of a body called the "Constitutional Council" whose task is to decide on the constitutionality of laws and legislative orders at the request of the President of the Republic or the President of the National Assembly.² The constitutional legislator of the 1996 constitution tried to ensure its supremacy over the hierarchy of laws through the establishment of this body, which monitors the constitutionality of laws and legislative orders³. However, this council did not see the light in practice and remained

a dead letter due to the conflicts and disagreements that arose at the time. Regarding the leadership of the country and the party, especially since Article 23 of the 1963 Constitution stipulates that: "The National Liberation Front is the only vanguard party in Algeria," which determines the policy of the nation, recommends the work of the state, monitors the work of the National Council and the government, and other principles and objectives entrusted to it, making it the leader guiding the objectives of the popular democratic revolution and the construction of the socialist system⁴. On the other hand Article 27 stipulates that: "The national sovereignty of the people shall be exercised by its representatives in the National Council, nominated by the National Liberation Front and elected by direct, public, and secret ballot for a period of five years⁵." This indicates the primacy of the party at the level of other authorities, as stipulated in Article 63 of the 1963 Constitution: "The Constitutional Council consists of the First President of the Supreme Council - who violated the French Court of Cassation - the heads of the civil and administrative chambers of the Supreme Council, three deputies appointed by the National Assembly, and two members appointed by the President of the Republic .

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The members of the Constitutional Council shall elect their own President, who shall not have a casting vote. " Through this text, it is clear that the composition of the First Constitutional Council is characterized by rationality, as it is not likely to have a political aspect on the judicial side relatively, given that political institutions are represented by

four (04) members and that the Supreme Council is represented by four (04) judges. However, the capacity and positions of judges make them influence the functioning of the Council, due to the weak composition of representatives of political institutions in the legal field, compared to judges exercising high judicial responsibilities that qualify them to direct the work of the Constitutional Council, especially since the text leaves members free to choose a president from among themselves and that his voice is unlikely in the event of equal votes and the possibility that the difference between the representatives of political institutions is prevalent, unlike the representatives of the judicial body who adhere to the letter of the text, and the legal nature prevails over the political nature, which suggests their superiority over other members, even theoretically, as the system is based on the unity and inclusiveness of power.⁶

After the promulgation of the 1963 Constitution, which approved the establishment of a Constitutional Council under Article 63, but this provision was not implemented, due to the application by the President of the Republic of the text of Article 59 there of, relating to the exceptional situation in which the National Assembly is authorized to legislate without deciding to lift it after the restoration of security and order, which states: " In the event of imminent danger, the President of the Republic may take exceptional measures to protect the independence of the nation and the institutions of the Republic, and the National Assembly shall convene. "⁷

Within this overlap in tasks and the party's dominance in political life, the establishment of the Constitutional Council was postponed and that postponement was enshrined by the revolutionary correction that took place on June 19, 1965, when the Constitution was suspended by the statement of June 19, 1965, and the July 10, 1965⁸ order, which continued to operate until the preparation of a second constitution in 1976 .

as for the notification mechanism, since the implementation of the 1963 Constitution did not last long after its suspension, it

remained ink on paper, and one of its articles came as follows Article 64 The Constitutional Council decides on the constitutionality of laws and legislative orders at the request of the President of the Republic or the President of the National Assembly⁹.

That is, the notification is limited to only two bodies, namely the President of the Republic or the President of the National Assembly.

1-2 Notification under the Constitution 1976

Algeria experienced a transitional period from 1965 to 1976, the date of the promulgation of the 1976 Constitution, and within this overlap in tasks and the party's dominance over political life, the establishment of the Constitutional Council was postponed and that postponement was enshrined by the revolutionary correction that took place on 19 June 1965, as the Constitution was suspended by the statement of 19 June 1965, and the order of 10 July 1965¹⁰, which continued to operate until the preparation of a second constitution in 1976, which adopted several principles such as the principle of socialism and the one-party system.

It was implemented until 1988, which witnessed bloody events that led to the emergence of the 1989 Constitution.

However, in drafting the 1976 Constitution, its authors avoided explicitly stipulating the principle of control over the constitutionality of laws in any form (political and judicial), despite repeated demands since the initiation of the discussion of the National Charter and its enrichment at party conferences.

In order to avoid raising the issue of its importance, some argued that the failure to establish a body to monitor the constitutionality of laws is due to avoiding the proliferation of supervisory institutions in order to avoid the overlap of their powers and ineffectiveness. The National People's Assembly, the Party Accountability Council, and the Financial Inspectorate. Some went on to say that there are many councils to monitor

them except to play their full role within the framework of the law, including the judiciary. This is evidence that those who hold these views do not distinguish between censorship cases.

Some jurists have gone along with what is adopted in the United States of America, despite the different nature of the two systems (socialist and free on the one hand and one party and pluralism on the other).¹¹

However, oversight of the constitutionality of laws in Algeria is possible, even if the Constitution does not explicitly stipulate it, citing the supremacy of the Constitution enshrined in Article 160 of the Constitution, which recognizes the recognition of the existence of a party that declares that there is a contradiction between the treaty and the Constitution, even if it does not specify its nature, considering that the judicial authority is the one that is a priori empowered to adjudicate this type of case, it is up to it to it. The adoption of the supremacy and inclusion of laws and the determination of complex procedures for amending the Constitution (Chapter VI) in comparison with the procedures for amending laws confirm that the laws must be in conformity with the supreme text, which will only be achieved by establishing the existence of control over the constitutionality of laws.

The authors of this opinion conclude that as long as the Constitution is so (rigid), which does not specify who enforces respect for it, logic requires a return to the judiciary, as is the case in the United States of America, by objecting to the application of any law contrary to the Constitution, which is the method known to control the constitutionality of laws by payment:¹²

Constitutional review by way of exception.

2- The period from 1989 to 1996

By adopting the Constitution of February 23, 1989, which was approved by referendum by the people with a majority of 73.43 percent of the votes cast.¹³

The Constitution of February 23, 1989, came as a result of extraordinary circumstances in Algerian society and political system, and to

meet political, economic and social demands embodied by the events of October 1988, expressing a new system of governance based on the sovereignty of the people, and aims to ensure and lay the foundations of a democratic system based on political pluralism and a society that participates in political decision-making.

The constitutional legislator relied on basic sources on which the 1989 Constitution was based, and also approved the principles on which the Algerian political system is based. If the 1989 Constitution adopted a number of provisions of the 1976 Constitution, of a legal and organizational nature, without ideology, especially in the field of organizing the authorities, the most important sources that formed the content of the 1989 Constitution were constitutional legitimacy and Islam¹⁴.

What is also new in the 1989 Constitution is the establishment of oversight bodies and advisory institutions aimed at following up the work of the State authorities and respecting the Constitution, providing opinions to the President of the Republic and monitoring the work of the State and public utilities. Article 153 states: "A Constitutional Council shall be established to ensure respect for the Constitution. The Constitutional Council shall also ensure the validity of the referendum, the election of the President of the Republic, and the legislative elections and shall announce the results of these operations¹⁵.

2-1 Notification under the Constitution 1989

The right of notification under the 1989 Constitution under Article 156 thereof by "the President of the Republic or the President of the People's National Assembly only"¹⁶, the restriction of notification to two personalities limited the effectiveness of the constitutional institution, due to its weakness in confronting the rest of the other authorities, as it was limited to the President of the Republic and the President of the People's National Assembly without extending it to some facades, which hindered the functions of the pluralistic democratic state by issuing laws that diminish some individual rights and

freedoms, including important ones, at the initiative or proposal of the President of the Republic and the President of the People's National Assembly. The method of notification highlights the political role of the Constitutional Council.

It is clear from the various texts of the Algerian Constitution that optional notification is only related to adjudicating the constitutionality of treaties, ordinary laws, and regulations, and the optional character of notification with regard to these texts may be due to the fact that they are many acts. If they are subject to obligatory control, they burden the Constitutional Council, and thus lead to its inability to keep pace with the pace of legislation and regulation, which leads to their obstruction.¹⁷

2-2 Notification under the Constitution 1996

It is also the initiative to notify either by the President of the Republic, or by the President of the National People's Assembly, or by the President of the National Assembly (according to Article 166 of the 1996 Constitution) compared to some Arab countries. For example, Article 86, paragraph 02 of the Mauritanian Constitution states: "The President of the Republic, the President of the National Assembly, the President of the Senate, one-third(1/3) of the deputies of the National Assembly and one-third(1/3) of the members of the Senate shall submit the law before its issuance to the Constitutional Council. According to Article 18 of the Organic Law of the Mauritanian Constitutional Council," The Council undertakes, when a law is submitted to it on the initiative of parliamentarians by means of a letter or several letters with a total capacity of signatures of at least one-third(1/3) of the deputies or senators. The Mauritanian Constitutional Council, to which the aforementioned issue has been presented to it in accordance with Articles 79 and 86, paragraph 02 of the Constitution, shall immediately inform the President of the Republic, the Prime Minister, the President of the National Assembly and the Senate and these other members of the two assemblies.

3- The period from 2016 to 2020.

He constitutional amendments of 2016 were new in several areas, which are embodied in Law No. 16-01 dated 26 Jumada Al-Awwal 1437/approved 6 March 2016,2 including the notification process and the bodies authorized to do so .

3-1 Notification under the Constitution 2016

As for the notification to the Constitutional Council, Articles 187 and 188 provided for the method of notification, in which the legislator expanded and added a number of bodies that did not have the right to this process.

The two articles are as follows : Article 187 : The Constitutional Council shall notify the President of the Republic, the President of the Council of the Nation, the Speaker of the People's National Assembly, or the Prime Minister.

Conclusion It may also be notified of fifty (50) deputies or thirty (30) members of the National Assembly .

The exercise of the notice set forth in the preceding two paragraphs shall not extend to the notice of defence of unconstitutionality set forth in Article 188 below.

Article 188: The Constitutional Council may be notified of a plea of unconstitutionality upon a referral by the Court or the Council of State ,when one of the parties to the trial claims before a judicial body that the legislative provision on which the outcome of the dispute depends violates the rights and freedoms guaranteed by the Constitution.

The conditions and modalities for the application of this paragraph shall be determined by an organic law.

The two articles added the following :

Fifty (50) deputies or thirty (30) members of the National Assembly.

*Prime Minister.

* By pleading unconstitutionality based on a referral from the court or the Council of State ,when one of the parties to the trial claims before a judicial body that the legislative provision on which the dispute depends violates the rights and freedoms guaranteed by the Constitution.

3.2 Notification under the Constitution 2020

The constitutional founder was dispensed with under the last amendment of 2020 that came after the 2019 movement. He dropped the system of government from the Constitutional Council to be replaced by the Constitutional Court under Chapter Four of the Constitution, Chapter One, entitled Oversight Institutions, which came in several different points from what is in force in the Constitutional Council. However, he kept the persons authorized to notify under Articles 192 and 193¹⁸ of the constitutional amendment, where the two articles came as follows:

Article 192 : The Constitutional Court may be notified by the bodies specified in Article 193 below, regarding disputes that may occur between the constitutional authorities.

These bodies may notify the Constitutional Court about the interpretation of one or more constitutional provisions, and the Constitutional Court shall give an opinion on them.

article 193 : The Constitutional Court shall be notified by the President of the Republic or the Speaker of the Council of the Nation.

or the president of the National People's Assembly or from the Prime Minister or the Head of Government, as the case may be.

It may also be notified of forty (40) deputies or twenty-five (25) members of the National Assembly.

The practice of notification set out in paragraphs I and II does not extend to the notification of non-payment - the practice of notification set out in Article 195 below does not extend.

If the constitutional amendment 2020 defined the scope of the framework of the Constitutional Court with the control of the bodies authorized to do so, it came as follows :

* The President of the Republic, has the power of notification, some of which are obligatory and some of which are permissible.

* Head of the Government or Prime Minister as the case may be,

*President of the People's National Assembly.

*, President of the National Assembly .

* 50deputies from the People's National Assembly or 30 members from the National Assembly .

It can be said that these bodies differ from one system to another and from one country to another. There is no unified model for the constitutional founder. The number ranges from narrowing to expansion .

For example, in France only the control exercised by the Constitutional Council , if the control is obligatory, the notification is made by the Prime Minister with regard to the organic laws or by one of the presidents of the two chambers of parliament with regard to the internal regulations, but if the control is permissible (ordinary laws and international commitments), the notification is made by the political authorities, namely the President of the Republic, the Prime Minister, the Speaker of the House of Representatives, the President of the Senate, sixty deputies or sixty members of a chamber.

Article 61, paragraph 2, provides that the President of the Republic, the Prime Minister, the President of the Senate, the National Assembly, the President of the Senate, sixty deputies or sixty senators may notify the Constitutional Council for the same purposes before promulgating laws.

Noting that the notification was initially limited to the President of the Republic, the Prime Minister and the President of the two Chambers of Parliament, however, the constitutional amendment issued on: 29 October 1974 established that: sixty (60)deputies of the Assembly or sixty (60) senators may apply to the Constitutional Council to examine the constitutionality of a law. The experience in France since the reform has shown that this expansion has benefited not only the opposition, but also the majority minority within the limits of 04 times until 1997 , and that during the 10 years of reform (1974-1984)Members of Parliament have used this right about 80 times¹⁹.

As for the Tunisian constitutional institution,

under Article 127 of the provisions of the Constitution of the Republic of Tunisia of 2022 (the Constitutional Court is competent to consider constitutional control.

1. Laws at the request of the President of the Republic or thirty members of the Assembly of the Representatives of the People or half of the members of the regions and regions.....²⁰

Compared to the Tunisian system, the Algerian constitutional institution has expanded the circle of those who are entitled to carry out the process of notifying the Constitutional Court.

it can also be noted that the constitutional founder has reduced the number that must be available to carry out the notification process,

It should be noted that the Algerian constitutional institution, compared to the French and Tunisian systems, especially after the constitutional amendment of 2016 to reduce the number of members to be available to carry out the notification process, whether for the required number of deputies of the National People's Assembly, which has become sufficient to have 40 deputies, indicating 50 deputies stipulated in the constitutional amendment of 2016. The same applies to the required number of members of the National Assembly, which became 25 members instead of 30 members, so the number required to carry out the notification process has become less than the French and Tunisian systems.

As for the constitutional control of laws in Egypt, we find that it differs from what is in force in both Tunisia and Algeria, it is purely judicial control. The Supreme Constitutional Court in Egypt has the possibility to address the issue of constitutionality on its own. The Egyptian legislator gave the Supreme Constitutional Court, through its law, the right to examine the constitutionality of any legal text on its own, without the need to also refer the issue of constitutionality from a court .

here is no doubt that giving the Supreme Constitutional Court this right is logical, as if the law of this court allowed all these courts

the right to refer, it is the first right of the Supreme Constitutional Court to refer, it is one of the first to recognize that right to the Supreme Constitutional Court, and if the court law gave the right to exercise constitutional control, but it set controls that must be taken into account by the Supreme Constitutional Court when addressing the issue of constitutionality, namely :

- That the text of the law is presented to the court on the occasion of the exercise of its competences, and that the court may, if it finds a text in the law for the provisions of the constitution, address the issue of constitutionality on its own initiative and without the need for the litigants to request it.

- The text of the law to which the court is subject to a constitutional examination shall relate to the dispute before it and it shall exercise any of the competences granted to it by the Constitution or the Law of the Supreme Constitutional Court.

Therefore, it cannot challenge the constitutionality of a legal text that does not relate to the subject matter considered by the Court, as the latter is not the authority to review all legal texts²¹

4 Conclusion:

The amendments introduced by the constitutional founder in all the boilers passed by the independent Algerian state until the last amendment of the constitution for the year 2020. My father founded a new republic and introduced several shifts in the general policy of the state. For the first time in Algeria, the constitutional court was replaced by the Constitutional Council. It can be said that the constitutional founder has been in accordance to some extent with this amendment, especially with regard to the process of censoring the legal texts issued by the authorities in the state and expanding them to organizations, including presidential orders. He also worked to reduce both the number of deputies to the National People's Assembly and the number of members of the National Assembly, which requires a simple amendment and a

change in the number of deputies to the National People's Assembly and members of the National Assembly. We believe that the constitutional founder has largely met its objectives of the last amendment of the Constitution aimed at restoring confidence between the ruler and the ruled and establishing a state of law, but we have not yet reached the achievement of all the objectives set .

There fore, we see the need for the following :

It is necessary to expand the notification bodies outside the three authorities and to grant the Constitutional Court the power of automatic action, especially if there is a dispute between the public authorities or a violation of the provisions of the Constitution, and not to wait for the intervention of the notification bodies.

Reducing the number of deputies to the People's National Assembly and members of the National Assembly have the right to notify the Constitutional Court so that the deputies and members of the opposition can take the initiative to notify the Constitutional Court. It is noted that the number is still high, although the new amendment has reduced it .

Making notification by referral mandatory : The Constitutional Court can be notified by referral by the Supreme Court or the Council of State within the framework of the mechanism of pleading unconstitutionality approved by the constitutional amendment in 2016 to the Constitutional Council and the constitutional founder retained in the 2020 amendment to the Constitutional Court, because it is a permissible order where the constitutional founder used the phrase "The Constitutional Court can be notified to plead unconstitutionality based on a referral by the Supreme Court or the Council of State.

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